

**Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Petition of Intrado Communications of	:	WC Docket No. 08-33
Virginia Inc. Pursuant to Section 252(e)(5)	:	
of the Communications Act for	:	
Preemption of the Jurisdiction of the	:	
Virginia State Corporation Commission	:	
Regarding Arbitration of an	:	
Interconnection Agreement with Central	:	
Telephone Company of Virginia and	:	
United Telephone – Southeast, Inc.	:	
(collectively, Embarq)	:	
	:	
	:	WC Docket No. 08-185
Petition of Intrado Communications of	:	
Virginia Inc. Pursuant to Section 252(e)(5)	:	
of the Communications Act for	:	
Preemption of Jurisdiction of the Virginia	:	
State Corporation Commission Regarding	:	
Arbitration of an Interconnection	:	
Agreement with Verizon South Inc. and	:	
Verizon Virginia Inc. (collectively,	:	
Verizon)	:	

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**COMMENTS OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**July 2, 2009**

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**BACKGROUND AND INTRODUCTION**

On June 4, 2008, the Wireline Competition Bureau (WCB) of the Federal Communications Commission (FCC) preempted, pursuant to section 252(e)(5) of the Act and the authority delegated to the WCB by the FCC, the jurisdiction of the

Commonwealth of Virginia State Corporation Commission (Virginia Commission) with respect to the arbitration of an interconnection agreement between Intrado and Embarq. On October 16, 2008, the FCC similarly preempted the jurisdiction of the Virginia Commission with respect to the arbitration of an interconnection agreement between Intrado and Verizon. On December 8, 2008, the Wireline Competition Bureau consolidated these two proceedings, noting the consistencies in the issues presented for arbitration. On June 5, 2009, the WCB took the unusual, and in this case laudable, step of seeking comment from parties not directly involved in the arbitration, but which would nonetheless be affected by the arbitration's outcome.

As is noted by the WCB in seeking comment "the complex policy issues implicated by the competitive provision of 911 service raised by this proceeding are best resolved with maximum participation by all interested parties. Because the resolution of such issues would impact the provision of public safety services in Virginia, moreover, we find that allowing potentially affected persons or entities to participate would better serve the public interest."<sup>1</sup> Ohio would note that, given the natural tendency of parties and State Commissions to look to the FCC and the WCB for guidance on issues surrounding the application of Sections 251 and 252 of the Act, the resolution of these issues will almost certainly impact the provision of public safety services beyond Virginia, in each state in which Intrado has

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<sup>1</sup> *Comment Sought On Competitive Provision Of 911 Service Presented By Consolidated Arbitration Proceedings*, Public Notice, WC Docket No. 08-33 & WC Docket No. 08-185, DA 09-1262, Released: June 4, 2009

sought interconnection, including Ohio. Based on this observation, the Public Utilities Commission of Ohio (Ohio Commission) presents its comments with regard to competition in the provision of the 911 network.

## **DISCUSSION**

### **A. The advent of competition in 911 services is inevitable.**

With the passage of the 1996 Telecommunications Act, Congress initiated a transition from a monopoly environment for telecommunications services to a competitive environment. In order to make that transition, certain market structures were required to prevent the existing monopoly providers of services from using their position as the incumbent carrier to raise barriers to entry for the emerging competitive carriers. The requirements of Sections 251 and 252 of the Act are a part of those structures, and they have served well in furthering competition in the broad category of telecommunication services for which they were designed.

However, it was and is inevitable that competitors arise who would offer “niche” services, with a business model built around providing that “niche” service better than other providers. Each time this has occurred, the parties to interconnection agreements have struggled, each seeking what they perceive as the most advantageous interpretation of the Act, and regulatory agencies have been faced with the necessity to arbitrate those negotiations in a way that furthers the competitive intent of the Act, while at the same time preserving the integrity of the network. It is not, therefore, a surprise to see it now happen in public-safety

services.

In addition to the tendency of markets to open in “niche” services, there is the coming of technological change and the quite natural and right desire for those providing public safety services to have the best tools available and affordable, with whatever advanced features the current technology may provide. Often a new entrant carrier can position itself so as to take advantage of technology changes and advances sooner and more effectively than the incumbent carrier can, or can find to be economic. This is the situation the WCB is faced with, as are the several State Commissions which are dealing with arbitrations between Intrado and various incumbent carriers. The question is not whether competition will come in the market for 911 and E911 services, or even whether it should, the question is, as always, how to best balance the Congressional intent of furthering competition in an equitable manner, as expressed in the 1996 Telecommunications Act, with the need to maintain the integrity of the network.

**B. The key questions in achieving the desired balance.**

One of the key questions that must be addressed in effecting the necessary balance is the question of how (and whether) a competitive 911 carrier fits into the framework contained in the Act. Certainly the parties in the pending arbitrations have their different positions on how and whether the Act contemplates, or allows for, competitive 911 services. Having addressed this question in the certification

of Intrado as a carrier in Ohio<sup>2</sup> and in the arbitration proceedings between Intrado and the various dominant ILECs in Ohio<sup>3</sup>, including both Embarq and Verizon,<sup>4</sup> Ohio has reached the following conclusions:

- Intrado is a telecommunications carrier pursuant to 47 USC 153, and is engaged in the provision of telecommunications services, as it provides a service that transmits and delivers information of the user's choosing, to a point of the user's choosing, and offers that service to a class of users, for a fee, as to be effectively available directly to the public. (See Certification Order at Finding 7, AT&T Award at 15 – 16 and 20 – 22)
- As such, Intrado is entitled to the rights and subject to the obligations of a telecommunications carrier pursuant to the Act, including the rights to request interconnection and arbitration of interconnection agreements under Section 252 of the Act. (See Certification Order at Finding 7, AT&T Award at 17)

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<sup>2</sup> *In the Matter of the Application of Intrado Communications, Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Case No. 07-1199-TP-ACE, Finding and Order dated February 5, 2008 (Certification Order) and Entry on Rehearing dated April 2, 2008 (Certification Rehearing). Both documents are attached.

<sup>3</sup> *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq*, Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No 07-1216-TP-ARB, Arbitration Award dated September 24, 2008 (Embarq Award) and Entry on Rehearing dated December 10, 2008 (Embarq Rehearing); *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Case No. 08-537-TP-ARB, Arbitration Award dated October 8, 2008 (CBT Award) and Entry on Rehearing dated January 14, 2009 (CBT Rehearing); *In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Case No. 07-1280-TP-ARB, Arbitration Award dated March 4, 2009 (AT&T Award) and Entry on Rehearing dated June 17, 2009 (AT&T Entry on Rehearing); *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Verizon North Inc.*, Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. 08-198-TP-ARB, Arbitration Award dated June 24, 2009 (Verizon Award). These documents are all attached.

<sup>4</sup> At the time of this writing, the parties have not yet either filed a conforming interconnection agreement, or petitioned for rehearing in Case No. 08-198-TP-ARB. The Ohio Commission will forward relevant documents when they become available.

- However, Intrado's telephone exchange activities are limited in scope and are not identical to those of a Competitive Local Exchange Carrier (CLEC). The Ohio Commission has therefore certified Intrado as a Competitive Emergency Services Telecommunication Carrier (CESTC). (See Certification Order at Finding 7) Rather than being granted all of the rights and privileges of a CLEC, the scope of Intrado's certification is limited to the company's operations relative to "the routing, transmission, and transport of traditional and nontraditional emergency call traffic to the appropriate PSAP or to allow for the handoff to a different 9-1-1 service provider, such as an ILEC for call completion to the appropriate PSAP" (Embarq Award at 7).
- As a result of this difference, and the requirements placed on Intrado's operation in Ohio as an exercise of public interest in an efficient, effective and reliable 911 system, not all aspects of interconnection between Intrado and an ILEC are subject to 251(c), but rather are subject to 251(a). (See Embarq Award at 7 – 9, Embarq Rehearing at Finding 12, CBT Rehearing at Finding 7)
- In the interest of efficiency, interconnection agreements may contain provisions that would only be applicable to a carrier operating as a CLEC, in the event Intrado were to seek certification as a CLEC.<sup>5</sup> (See AT&T Award at 26 – 27) However, at no time may Intrado avail itself of services or facilities that exceed the scope of Intrado's certification.

In addition, there is legitimate concern regarding how the existence and operations of a competitive 911 carrier affects the public interest in a reliable, efficient and effective 911 network. While the FCC has recognized this public interest in requiring VoIP providers to provide access to 911 and E911 services,<sup>6</sup> the primary responsibility for ensuring the availability of 911 and E911 networks has been vested in the States. Each state government has the primary

<sup>5</sup> Indeed, Intrado has subsequently requested and been granted certification as CLEC in Ohio.

<sup>6</sup> *In the Matters of IP-Enabled Services / E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 04-36 & WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, Released June 3, 2005.



responsibility for establishing and ensuring a reliable and effective 911 system, and different states have taken different approaches to meeting that responsibility. Under Ohio law, each county develops and proposes a 911 plan for that county, and establishes PSAPs for the area(s) within that county. Within the context of Ohio law, the Ohio Commission has determined that CESTCs, such as Intrado, are telephone companies and public utilities, and therefore subject to the jurisdiction of the Ohio Commission. (See Certification order at Finding 7) In the current environment, the Ohio Commission has exercised this jurisdiction to ensure provisioning of seamless 9-1-1 service. To that end, the Ohio Commission requires that each county may select no more than two providers of 911 and E911 service, each of which must carry all calls of the designated type (whether wireline or wireless/VoIP) for the entire countywide 911 system<sup>7</sup>, whether the incumbent or a competitor. (Certification Order at Finding 10 and Entry on Rehearing at Finding 24) The Ohio Commission also requires the carriers to provide interoperability across carriers, systems and/or county boundaries regardless of the carrier chosen by a particular county, or the technology that carrier uses. (Certification Order at Finding 12)

Ohio has concluded that the existence of competitive 911 service providers will provide PSAPs with the opportunity to contract with entities that provide most

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<sup>7</sup> Intrado and Hamilton County, Ohio have requested a waiver of this requirement to permit a trial system to be established in a single Hamilton County PSAP. See *In the Matter of the Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Case No. 07-1199-TP-ACE, Entry, Dated October 1, 2008

advanced 9-1-1 available, regardless of technology. It may also provide Ohio's counties and PSAPs with the opportunity to obtain services tailored more specifically to each county's or PSAP's needs. In addition, Ohio believes that a competitive environment for 911 services will encourage the further development of 911 technologies.

Finally, the question has been raised how competitive carriers using non-traditional technologies fit into the framework contained in the Act. Some may argue that either the transmission technology used by Intrado (being at least in part IP-based) and/or the fact that 911 systems in general are heavily database dependent, removes Intrado, or any CESTC, from consideration as a telecommunications carrier within the Act, or at least removes it from state jurisdiction as an information service. However, the FCC has already established that IP transmission technologies embedded within a carrier's network do not change the essential nature of a telecommunications service.<sup>8</sup> Both the FCC and the Ohio Commission have recognized 911 services as a part of a telecommunications service.

In addition, as discussed earlier, state jurisdiction over these services already exists as a result of the high level of public interest in 911 services and their advancement. Based on this, Ohio believes that the several states, having the burden and responsibility of ensuring their public an efficient reliable and

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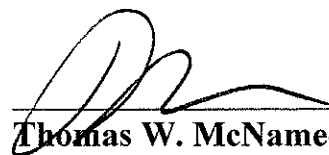
<sup>8</sup> See, for example *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, Released April 21, 2004

effective 911 system, also have the burden and responsibility of determining how, within the context of their state laws, competitive 911 services, however provided, interact and interface with the existing 911 services offered over the public switched telephone network. Sections 251 and 252 of the act appear to provide sufficient flexibility to accommodate these public interests, and new or emerging technologies.

### **CONCLUSION**

As noted earlier, the action of the WCB to seek comment on these arbitrations is both unusual and laudable. Ohio presents these comments, and the attached decisions, in an effort to aid the Bureau in resolving the issues presented by these arbitrations. It is the Ohio Commission's sincere wish that these comments and documents will be of help.

Respectfully submitted,



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